

Tort "Reform" Is Un-American

The insurance industry companies and other large corporations spend billions of dollars annually attempting to brainwash potential jurors with false, misleading, anti-trial lawyer, anti-lawsuit propaganda. Their ultimate goal, of course, is to create a legal system in which corporate wrongdoers can avoid responsibility for the harm they cause ordinary people like you and me. They seek to create a legal system devoid of liberty and justice for all and devoid of any checks on the wealthy and powerful. A legal system in which injured persons will receive no justice or less than full justice. A legal system in which the government (*i.e.*, us taxpayers as opposed to the wrongdoer) will eventually bear the burden of the injured people who receive something less than full justice for their injuries. The reason our adversaries want such a legal system is simple: MONEY, lots of it. The less responsibility they have for the harm they cause, the more money they make.

The foes of liberty and justice for all have an appetite for power and money that is insatiable. Apparently not satisfied with the results of their continuous billion dollar propaganda campaigns, they have also been trying for many years to destroy the foundation of our justice system, the right to trial by jury, under the guise of so-called tort reform. As set forth below, "tort reform" is antithetical to the notion of liberty and justice for all and is, therefore, un-American.

Our Founding Fathers fled England and came to this country to escape the tyranny of royalty and the wealthy ruling class of that country. Above all, our Founding Fathers sought to create a new nation where freedom reigned. They sought to create a new world where a man's success was determined only by his ability and his work ethic, not by his family name or his birthright. They sought to create a new nation with liberty and justice for all. To accomplish this, our Founding Fathers established a democratic electoral process in which leaders were elected by the people and a justice system in which criminal and civil disputes were decided by a jury of one's peers. These two features of American life set us apart from much of the rest of the world and contribute significantly to the freedom we enjoy as Americans.

Our Founding Fathers provided us the right to jury trial in the Sixth and Seventh Amendments to the U.S. Constitution. Only in a trial by jury is justice determined by the people of the community in which the case is located. The Founding Fathers considered the jury a necessary check on the power of the government and on the power of the wealthy ruling class. In fact, King George III's efforts to restrict jury trials was cited in the Declaration of Independence as one of the grievances that justified breaking away from England.

There are several quotes by our nation's Founding Fathers and others that best describe the crucial relationship between the right to jury trial and the freedom we enjoy in America. Among them, Thomas Jefferson said, "I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its constitution." John Adams said, "Representative government and trial by jury are the heart and lungs of liberty. Without them, we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle and fed and clothed like swine and hounds." According to Teddy Roosevelt, the jury "protects us from the harsh hand of government." All in all, the right to trial by jury is as American as apple pie and baseball.

by Joel R. Bryant



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In contrast, a key component of most tort "reform" efforts is to impose arbitrary damage caps on injured people. Specifically, in some states, a person injured by another cannot recover more than \$250,000.00 in non-economic damages no matter how severe their injuries and no matter how egregious the defendant's conduct was. In such states, a child who suffers brain damage as a result of a collision caused by a drunk driver, a school teacher who is paralyzed by a drag-racing college student who runs a red light and a college student who is crushed in a head-on collision by a driver who fell asleep at the wheel, cannot recover more than \$250,000.00 in non-economic damages despite their severe, life-long debilitating injuries. One might ask who in their right mind would consider \$250,000.00 in exchange for such horrible injuries to be fair and reasonable compensation. The answer is that no one would. Therein lies the blatant unfairness of such tort "reform" laws.

Further, such tort "reform" imposes the greatest impact on America's elderly. For example, a 65-year-old man who develops stage IV pressure ulcers (to the bone) and sepsis as a result of a nursing home's failure to reposition him regularly and provide him basic necessities of life

such as food and water, and the family of a 70-year-old woman who chokes to death when the facility ties her call light up out of her reach, cannot recover more than \$250,000.00 in non-economic damages when tort "reform" is implemented. Since elderly persons (defined as persons 65 or older in California) rarely suffer significant economic losses (*i.e.*, lost income or out-of-pocket medical expenses) when they are severely injured, damage caps on non-economic damages often make it cost prohibitive for severely injured elders to pursue a civil suit against the wrongdoer. The result of such tort "reform" would be threefold. First, the wrongdoer would not be held accountable. Second, the nursing home would have no incentive to afford dignity and respect to, and properly care for, its elderly residents, thereby exacerbating the epidemic of miserable, shoddy care for America's elders. Three, the elder and his family would be denied the full justice. In the end, us taxpayers would foot the bill in caring for these damaged elders that the wrongdoer should have paid for.

When "tort reform" is implemented, the people who are most severely injured are treated the worst. The people who are most severely injured are denied full justice. Anything less than full justice is, of course, injustice. The

persons and companies who cause the most harm receive the most benefit from "tort reform" laws. How can anyone in good conscience seek to create such a system?

A recent tort "reform" bill being discussed in the United States House of Representatives is HR 5. Under HR 5, our mothers and fathers who become victims of nursing home abuse, persons harmed by insurance companies, persons severely injured as a result of dangerous drugs and defective medical products would all be precluded from recovering more than \$250,000.00 in non-economic damages from the wrongdoers. HR 5 would preempt state laws. In other words, if HR 5 passed, these damage caps would apply in all states irrespective of state laws to the contrary. The states and their citizens would have to bow down to the federal government. Sound a lot like the 18th century England which our Founding Fathers left to seek a better life and create our wonderful free nation?

The end result of such "tort reform" is to rob juries of their ability to make decisions based on the evidence in each case. Where "tort reform" has been implemented, no matter what the evidence is in that particular case, no matter what the jury decides is fair and reasonable compensation in that particular case

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following way. When redevelopment agencies were originally established (decades ago), the legislature contemplated them as temporary agencies that would be formed to address the problem, address it, and disband. Having succeeded in lobbying for language providing for extensions of time, these agencies have become institutional. The first agency was formed in 1948 and is

still collecting tax increment revenue. If true blight existed in 1948, which blight has not been eradicated since that time, the unwritten conclusion is that it must not be very harmful to the community.

We have seen the results of this here in San Diego. When the redevelopment laws were first enacted, concern was being expressed about shantytown conditions without

indoor plumbing, electricity or heating. Now the laws have been used to build a baseball stadium. Given the illegitimate removal of the tax increment cap (addressed in a previous article in this column), if San Diego's agency remains in place, the next blight to be addressed is the alleged "need" for a new football stadium. **TBN**

President's Column Continued

and no matter what the jury decides is justice in that case, the jury's verdict will be ignored and declared void to the extent that it exceeds the damage cap in effect in that state or imposed by the federal government.

Make no mistake about it, such arbitrary caps are an outright attack on the right to trial by jury. Even our United States Supreme Court recognizes that the right to a jury trial includes the right to have a jury determine the amount of damages, if any, awarded to the injured person. *Feltner v. Columbia Pictures Television, Inc.* (1998) 523 U.S. 340, 353. Indeed, where tort "reform" is implemented, some legislator in Sacramento or Washington, D.C., who will never hear any testimony, never meet the parties in the case and never see any other evidence in the particular case is substituting his or her judgment as to what is fair and reasonable compensation for that of the juror who is a member of the community, has taken precious time away from work and family to listen to days of testimony, to deliberate face-to-face with her fellow jurors and to reach a just verdict. Is such a system one which should be embraced by a nation which values liberty and justice for all?

Legislating arbitrary caps on the damages that can be awarded to injured people and the families of

those who have been killed by neglect, deprives jurors of the right and duty to make decisions in individual cases based on the evidence before them. Why can't American citizens make a decision as to whether or not a defendant was negligent? Why can't American citizens make a decision as to whether or not an individual was injured or killed by the negligence of another? Why can't American citizens determine what is fair and reasonable compensation for the injuries or death caused by the wrongdoer's negligence?

Notably, I have never heard any of the tort "reformers" suggest that American citizens are incapable of sitting on a criminal jury and making a decision about the guilt or innocence of a criminal defendant, even in cases in which the possible penalty is life imprisonment or even execution. Certainly, if we can trust American citizens to sit in judgment in a criminal trial, they can be trusted to sit on a civil jury and determine whether or not a person who has been harmed or killed by the fault of another is entitled to fair and just compensation, and if so how much.

The fundamental premise of our civil justice system is personal responsibility. Our civil justice system requires that the person or company responsible for causing harm to another should pay her fair and

reasonable compensation for such harm. However, if the government passes limits on personal responsibility in the form of damage caps, people will not be held accountable for their wrongdoing. Do we really want a system in which certain wrongdoers will not be held accountable for their wrongdoing? Again, sounds more like 18th century England where the laws protected the rich and powerful and were used against everyone else.

Don't let the tort "reformers" fool you. Their self-serving efforts are an outright assault on our constitutional right to trial by jury and are antithetical to the notion of liberty and justice for all. Be sure to educate your neighbors, friends and families about so-called tort "reform." Once you do, they too will realize that tort "reform" is Un-American. **TBN**